

# **TORRES DECLARATION**

## **EXHIBIT 2**

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ESTTA Tracking number: **ESTTA144299**Filing date: **06/05/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

<b>Name</b>	Milagros Imports, Ltd.
<b>Granted to Date of previous extension</b>	06/06/2007
<b>Address</b>	358 Fifth Avenue, Suite 1500 New York, NY 10001 UNITED STATES

<b>Attorney information</b>	Seann W. Hallisky Stoel Rives LLP 600 University Street Suite 3600 Seattle, WA 98101 UNITED STATES tm-pdx@stoel.com Phone: 206-624-0900
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**Applicant Information**

<b>Application No</b>	76598013	<b>Publication date</b>	02/06/2007
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<b>Opposition Filing Date</b>	06/05/2007	<b>Opposition Period Ends</b>	06/06/2007
<b>Applicant</b>	Progress Vantage Limited Unit 13A1, 13th Floor, Park Sun Building 103-107 Wo Yi Hop Road Kwai Chung, New Territories, HONG KONG		

**Goods/Services Affected by Opposition**

Class 025. First Use: 2003/03/21 First Use In Commerce: 2004/01/15  
All goods and services in the class are opposed, namely: House slippers

**Grounds for Opposition**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.</i> Fraud	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

**Mark Cited by Opposer as Basis for Opposition**

<b>U.S. Application No.</b>	77170813	<b>Application Date</b>	05/02/2007
<b>Registration Date</b>	NONE	<b>Foreign Priority Date</b>	NONE
<b>Word Mark</b>	BETTA		
<b>Design Mark</b>	77170813#TMSN.jpeg		
<b>Description of Mark</b>	NONE		
<b>Goods/Services</b>	Class 025. First use: First Use: 2004/02/04 First Use In Commerce: 2004/04/26 Footwear, slippers, socks, sandals, booties, gloves, robes; shower wrap sets comprised of shower wraps, slippers, and head wraps; slipper sets comprised primarily of slippers and one or more of socks, pumice stones, toe separators, therapeutic eye masks, and head wraps		

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<b>Related Proceedings</b>	United States District Court for the Southern District of New York, Case No.: 07-CV-3215
<b>Attachments</b>	77170813#TMSN.jpeg ( 1 page )( bytes ) ECOPY36S-760-SEA-Exchange-06052007-160405.pdf ( 7 pages (306123 bytes )
<b>Signature</b>	/seann w. hallisky/
<b>Name</b>	Seann W. Hallisky
<b>Date</b>	06/05/2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application No. 76/598013  
Mark: BETTA  
Applicant: Progeess Vantage Limited  
Published in the *Official Gazette* on February 6, 2007

MILAGROS IMPORTS LIMITED, a New  
York corporation,

Opposer,

v.

PROGRESS VANTAGE LIMITED, a  
foreign corporation;

Applicant.

OPPOSITION NO. \_\_\_\_\_

NOTICE OF OPPOSITION

Opposer Milagros Imports Limited, 358 Fifth Avenue, Suite 1500, New York, NY 10001 ("Milagros") believes that it will be damaged by registration of the mark shown in the above-identified application for use on house slippers in Class 25, and hereby opposes the same on the following grounds:

1. Milagros is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York. Milagros designs, markets, and sells footwear and other personal goods bearing the BETTA mark throughout the United States and Canada.

NOTICE OF OPPOSITION - 1  
Application Serial No. 76/598013

Seattle-3370456.2 0074068-00001

STOEL RIVES LLP  
ATTORNEYS  
600 University Street, Suite 3600, Seattle, WA 98101  
Telephone (206) 624-0900

2. Upon information and belief, Applicant Progress Vantage Limited ("Progress") is a corporation organized and existing under the laws of China, with its principal place of business in Kwai Chung, New Territories, Hong Kong. Progress also does business in China and in the United States through its subsidiary, Goddess Footwear Company ("Goddess Footwear"). Progress manufactures footwear and other goods bearing various marks, including the BETTA mark. Until recently, Progress served as one of several manufacturers of goods designed, marketed, and sold by Milagros. At Milagros's request, Progress manufactured and shipped goods bearing the BETTA mark for Milagros's sale in the United States.

3. The BETTA mark is represented as the word "BETTA" in a stylized design with particular colors, specific sizes, and an elegant font. The word "BETTA" was chosen as Milagros's mark because of its availability at the time Milagros entered the market and developed its brand. Milagros dictates the appearance of the mark appearing on its goods, including its color, font, and size.

4. Milagros developed the BETTA brand in the United States. Upon information and belief, Milagros was the first company in the United States to use the BETTA mark in connection with footwear and other personal goods. In November 2003, Milagros began developing product designs and packaging for products intended to be sold under the BETTA mark in the United States. Milagros made first use of the BETTA mark in the United States at least as early as February 2004 and has made continuous and exclusive use of the BETTA mark in commerce in the United States since at least April 2004 in connection with its footwear and other personal products.

5. Milagros's name is the only name that appears on any packaging or promotional materials in connection with its goods sold bearing the BETTA mark in the United States. Milagros exercises exclusive control over the nature and quality of the goods on which the BETTA mark appears. Milagros pays for all advertising and promotion of its goods bearing the BETTA mark. Consumers look to Milagros as standing behind those goods. Complaints for

1 defects are directed to Milagros. Milagros has not authorized anyone else to use the BETTA  
2 mark in the United States.

3 6. On May 2, 2007, Milagros filed U.S. Trademark Application Serial No.  
4 77/170813 for the mark BETTA for use on "footwear, slippers, socks, sandals, booties, gloves,  
5 robes; shower wrap sets comprised of shower wraps, slippers, and head wraps; slipper sets  
6 comprised primarily of slippers and one or more of socks, pumice stones, toe separators,  
7 therapeutic eye masks, and head wraps" in Class 25.

8 7. Milagros goods bearing the BETTA mark are manufactured to Milagros's  
9 specifications by various manufacturers in China and Korea. Progress has served as one of  
10 several manufacturers for Milagros over the past several years. Milagros has used several  
11 different manufacturers of goods bearing the BETTA mark. Progress has never been Milagros's  
12 exclusive manufacturer of goods bearing the BETTA mark, and Milagros never intended to buy  
13 exclusively from Progress.

14 8. Progress is aware of the continuous and exclusive use of the BETTA mark in the  
15 United States by Milagros, and has previously taken actions inconsistent with its current position  
16 alleging ownership. For example, in March 2006, Milagros received a letter from the purported  
17 owner of the BETTA mark in Australia alleging infringement of its mark in the United States.  
18 Although Milagros contacted Progress to confer about the Australian mark, Progress made no  
19 attempt to defend the mark in which it now claims ownership rights. Milagros, however,  
20 engaged counsel to defend its ownership rights in the BETTA mark in the United States based on  
21 use. Milagros successfully defended against the allegation of infringement.

22 9. Between approximately November 2003 and April 2004, representatives of  
23 Milagros and Progress discussed registering the mark BETTA in the United States on behalf of  
24 Milagros. Milagros indicated that it would file such an application. Progress then offered to file  
25 the application on behalf of Milagros. Milagros agreed with the understanding that the  
26 application to register the mark was to benefit Milagros. On June 15, 2004, Progress applied for

1 registration in the United States for the BETTA mark, U.S. Application Serial No. 76/598013.  
2 Unbeknownst to Milagros, however, Progress claimed use of the mark in the United States in  
3 connection with house slippers since March 21, 2003, and use in commerce since January 15,  
4 2004.

5 10. Upon information and belief, Progress has never used the BETTA mark in the  
6 United States in connection with any goods or services. Progress nevertheless sent an email to  
7 Milagros in November 2006 indicating that it intended to "sell" the rights to use the BETTA  
8 mark in the United States to a third party.

9 11. In February 2007, Milagros learned that representatives of Progress's subsidiary,  
10 Goddess Footwear, contacted Milagros's customers in the United States to solicit sales of  
11 footwear bearing the BETTA mark. As the former manufacturer of slippers designed, marketed,  
12 and sold by Milagros, Progress has had access to Milagros's confidential business information,  
13 including the identity of all of Milagros's customers. Progress's and Goddess Footwear's actions  
14 have caused actual confusion among Milagros's customers concerning whether Progress's goods  
15 are related to Milagros's goods.

16 12. On March 2, 2007, Milagros sent a cease and desist letter to Progress. Milagros  
17 demanded, among other things, that Progress assign the published application to register the  
18 BETTA mark to Milagros or abandon the published application. Progress refused to do either,  
19 responding instead with its own demands.

20 13. On April 19, 2007, Progress's attorney informed Milagros that, absent an  
21 agreement whereby Milagros denied ownership of the BETTA mark by April 23, 2007, Progress  
22 would file an action for trademark infringement and seek injunctive relief. On April 20, 2007,  
23 Milagros filed a civil action in the United States District Court for the Southern District of New  
24 York, Case No. 07-CV-3215 (the "Litigation"), seeking declaratory and injunctive relief  
25 confirming its exclusive right to use the mark BETTA in commerce in the United States in  
26 connection with footwear and other personal goods.

1           14.       Milagros intends to file a motion to suspend all proceedings before the  
2 Trademark Trial and Appeal Board related to Application Serial No. 76/598013 pending  
3 resolution of the Litigation.

4           15.       The registration to Progress of the mark sought in U.S. Application No.  
5 76/598013 should be denied on the ground that the mark sought to be registered by Progress for  
6 the goods identified in its application is confusingly similar to Milagros's mark. Use of the mark  
7 sought to be registered by Progress has caused and is likely to cause confusion, mistake, and/or  
8 deception in the minds of the public and to lead the public and prospective purchasers to believe  
9 that Progress's goods are related to Milagros's goods or in some way backed by Milagros's name  
10 and good reputation, to the damage and injury of the purchasing public and to the damage and  
11 injury of Milagros.

12           16.       The registration to Progress of the mark sought in U.S. Application No.  
13 76/598013 should also be denied because Progress seeks to procure the registration by fraud.  
14 Progress's application states that Progress's first use of the BETTA mark was on March 21, 2003  
15 and its first use in commerce in the United States was on January 15, 2004. The application is  
16 dated June 8, 2004, and is signed under penalty of perjury by "Lin Chuk Hung, Director," "For  
17 and on behalf of PROGRESS VANTAGE LIMITED." By signing the application, Progress  
18 represented under penalty of perjury that "no other person, firm, corporation or association has  
19 the right to use said mark in commerce, either in the identical form or in such near resemblance  
20 thereto as may be likely, when used on or in connection with the goods of such other person,  
21 firm, corporation or association to cause confusion, or to cause mistake, or to deceive; that all  
22 statements made herein of his own knowledge are true and that all statements made on  
23 information and belief are believed to be true."

24           17.       In its application, Progress claims a first use of the BETTA mark "at least as  
25 early as March 21, 2003" and a first use of the BETTA mark in commerce in the United States  
26

1 "at least as early as January 15, 2004." On information and belief, however, Progress has never  
2 used the BETTA mark in the United States.

3 18. Progress also purported to attach to its application a specimen of the mark "as  
4 actually used." On information and belief, the footwear depicted in the specimen has never been  
5 used in commerce in the United States.

6 19. Progress also knew at the time it made these statements that Milagros made  
7 exclusive use of the mark BETTA in commerce in the United States in connection with footwear  
8 and other personal goods. Progress knew this because it manufactured goods designed,  
9 marketed, and sold by Milagros; the goods were manufactured at Milagros's request and to  
10 Milagros's specifications; and Milagros exercised exclusive control over the nature and quality  
11 of the goods manufactured by Progress.

12 20. Progress acknowledged Milagros's right to use the BETTA mark in commerce  
13 in the United States both before and after filing its application. Before filing its application,  
14 Progress represented to Milagros that it would apply for registration of the BETTA mark in the  
15 United States on behalf of Milagros. After filing its application, Progress failed to defend the  
16 BETTA mark in the United States and instead deferred to Milagros's defense of the mark.

17 21. At the time it made the false and fraudulent statements described in Paragraphs  
18 16-20 herein, Progress knew of Milagros's exclusive use of the BETTA mark in commerce in the  
19 United States, it knew that Milagros's exclusive use of the BETTA mark in commerce in the  
20 United States gave Milagros superior rights in the mark, it knew that another use of the BETTA  
21 mark in the United States would result in confusion. As a result, it may be inferred that Progress  
22 intended to procure a registration to which it is not entitled.

1 WHEREFORE, Milagros respectfully requests that this opposition be sustained and that  
2 registration be denied to Progress on Application Serial No. 76/598013.

3 Please address all communications regarding this opposition to:

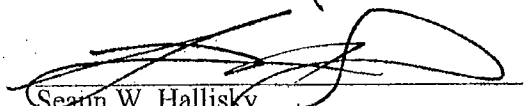
4 Stoel Rives LLP  
5 600 University Street, Suite 3600  
6 Seattle, WA 98117  
Telephone: (206) 624-0900  
Fax: (206) 386-7500

7 This Notice of Opposition is being submitted electronically through the ESTTA system  
8 with the filing fee paid by credit card.

9 DATED: June 6, 2007.

10 Respectfully submitted,

11 STOEL RIVES LLP

12   
13 Sean W. Hallisky  
14 Alfred Arthur Day  
Attorneys for Milagros Imports Limited